

17

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A REGULATORY)
ORDER ISSUED BY CLALLAM COUNTY)
TO TWIN RIVERS, INC.)
TWIN RIVERS, INC.,)
Appellant,)
v.)
CLALLAM COUNTY,)
Respondent.)

SHB No. 77-41

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a regulatory order directed to appellant Twin Rivers, Inc., came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert F. Hintz, Robert E. Beaty, and Gerald D. Probst, at a hearing on April 26, 1978 in Lacey. David Akana presided.

Appellant was represented by its attorney, David V. Johnson; respondent was represented by Craig Knutson, Deputy Prosecuting Attorney.

1 Having heard the testimony, having examined the exhibits,
2 and having considered the contentions of the parties, the
3 Shorelines Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant is the general partner which was organized to manage
7 approximately five acres of property owned by fourteen limited
8 partners. The subject property is located in Clallam County on the
9 shores of the Strait of Juan de Fuca and is bordered on the east by
10 the East Twin River and on the west by the West Twin River. The
11 site lies within a rural environment designation of the shoreline
12 master program. The property was purchased in August of 1975 by the
13 limited partners and was managed by a predecessor general partner
14 until its formal replacement by the limited partners. The property
15 is used by the limited partners as a private camping area for their
16 self-contained campers.

17 II

18 Prior to October 20, 1976, the former general partner had
19 performed certain grading, clearing and bulldozing upon wetlands
20 associated with the bordering shorelines. Also during this time period,
21 the limited partners placed a single-rail fence and gate made from
22 donated materials along the majority of their south property line for
23 the purpose of keeping people off their property. Fallen trees located
24 more than 200 feet from the shoreline were removed and signs were
25 placed on the fence. A number of fire pits were placed on the site
26 for individual use.

27 In October, 1976, respondent's agent visited the property and

1 found a small amount of debris at the high water mark.

2 III

3 After October 20, 1976, the appellant, through the labor of
4 its limited partners, laid a 400-foot long plastic water pipeline
5 to their property and placed eight faucets therein at a cost for
6 materials of about \$100.

7 IV

8 Since the placing of fences and signs on the property, respondent's
9 agent testified that he noticed that the public was seldom seen using
10 the beach along the Strait of Juan de Fuca. Appellant's evidence
11 showed continued use of the shoreline by members of the public over
12 a non-fenced area. To gain access to the shoreline, the public must
13 cross appellant's property over which it has no apparent right of
14 access. Appellant allows public access to the water over the unfenced
15 portion of its property, however.

16 V

17 Witnesses from the county estimate that the value of the
18 separate improvements to the land, both inside and outside of the
19 shoreline jurisdictional area since August 1975, to be \$1000 or
20 more. The actual expense to appellant for the separate improvements
21 has been about \$100 because the improvements were donated through the
22 efforts of the limited partners.

23 VI

24 By notice dated November 21, 1977, respondent ordered appellant
25 to submit applications for a shoreline substantial development permit
and a preliminary plat. Such action was necessitated because appellant
27 allegedly was interfering with the public's use and access to the

1 shoreline and was operating as an unapproved camper club subdivision
2 without the required facilities during the period from October 20, 1976
3 to the date of the notice. Appellant appealed the order to this
4 Board.

5 VII

6 Any Conclusion of Law which should be deemed a Finding of Fact
7 is hereby adopted as such.

8 From these Findings, the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 A regulatory order issued by a local government may require
12 the recipient thereof to take specific action if

13 (a) The development constitutes an integral part
14 of substantial development being undertaken, or about
15 to be undertaken, on the shorelines of the state in
the absence of a substantial development permit; or

16 (c) The development being undertaken on the
17 shorelines of the state is in violation of RCW 90.58.020,
and the following: . . .

18 (11) . . . the master program for the area. WAC 173-14-180(1)

19 Such regulatory order must set forth the "specific nature, extent
20 and time of violation, and the damage or potential damage."

21 WAC 173-14-180(2)(a). Specific corrective action and the time
22 for such action can be directed by the order. WAC 173-14-180(2)(b).

23 II

24 The first question to be addressed is whether there is or is
25 about to be a substantial development on the shorelines.

26 RCW 90.58.030(3)(d) defines development:

27 "Development" means a use consisting of the
construction or exterior alteration of structures;

1 dredging; drilling; dumping; filling; removal of any
2 sand, gravel or minerals; bulkheading; driving of
3 piling; placing of obstructions; or any project of
4 a permanent or temporary nature which interferes
5 with the normal public use of the surface of the
6 waters overlying lands subject to this chapter at
7 any state of water level;

8 . . .

9 RCW 90.58.030(3)(e) defines substantial development:

10 . . .
11 "Substantial development" shall mean any development
12 of which the total cost or fair market value exceeds one
13 thousand dollars, or any development which materially
14 interferes with the normal public use of the water or
15 shorelines of the state. . . .

16 A conclusion that a development is "substantial" requires that the
17 regulatory order be upheld and that a permit be secured.

18 WAC 173-14-180; RCW 90.58.140.

19 III

20 Allocation of the burden of proof of an appealed regulatory order
21 is not set forth in the statutes or regulations. Chapter 90.58 RCW;
22 chapter 173-14 WAC. Such burden should be placed upon the party
23 who is seeking to change the present state of affairs, here the
24 county. We conclude that appellant's activities constituted
25 "developments" within the meaning of RCW 90.58.030(3)(d). However,
26 we are unpersuaded from the evidence that the total developments
27 placed within and outside of the shoreline area since October 20, 1976
28 exceed a cost or fair market value of \$1,000. Further, we find no
29 material interference with the normal use of the water or shorelines of
30 the state. Moreover, the evidence shows that the public has no existing
31 right of access across appellant's property which has been affected by

32 FINAL FINDINGS OF FACT,
33 CONCLUSIONS OF LAW AND ORDER

1 appellant's developments.

2 We conclude therefore, from the record established, that the
3 total homestead developments do not, as yet, amount to a substantial
4 development. It follows that any development constructed on or
5 after October 20, 1976 as set forth, in the regulatory order, does
6 not amount to a "substantial development." The regulatory order
7 cannot be upheld on the grounds that there is a "substantial
8 development."

9 IV

10 A second basis upon which the regulatory order may be supported
11 is that the development being undertaken violates RCW 90.58.020 and
12 the master program. We can find no violations of the policy of the
13 Act, RCW 90.58.020, or the cited sections of the adopted and
14 approved master program¹ by the developments as presented. Thus,
15

16 1. The rural environment sections of the master program
17 provides in part:

18 E.1.c. Dumping of foreign material is to be allowed only
19 under a conditional use permit. (Page 28);

20 F.7.a. Vistas and viewpoints shall not be degraded and
21 visual access to the water from such vista shall
22 not be impaired by placement of signs and billboards.
(Page 35);

23 F.21.c. Other than single-family residences, priority shall
24 be given to those developments which provide recreational
25 uses and facilitate access to the shoreline. (Page 39).

26 F.21.e. In recreational areas in a Rural Environment, parking
27 and camping sites must be located inland from the shoreline
and the immediate edge of the water. (Page 40).

F.21.h. The regulations issued by state and local health agencies

1 the regulatory order does not meet the requirements of WAC 173-14-180
2 and cannot be upheld.

3 V

4 Further we cannot find that the development as presently constructed
5 and used threatens public health, safety and public rights in navigable
6 waters as alleged in the regulatory order.

7 While the county may have justification for questioning the
8 legal form and purpose of the organization with regard to its
9 recreation and camper club ordinances, we find it unnecessary to
10

11 Cont.

12 shall govern all sanitary considerations and sewage disposal
13 methods. Further, such systems as determined upon must not
14 adversely effect or alter the natural features which are
attractive for recreational uses of the shoreline. (Page 40).

15 F.21.j. Recreational subdivisions are an appropriate use in the
16 Rural Environment, provided that they do not conflict with
17 the regulations governing the natural system in which they
18 are to be placed. Such developments shall be designed in
compliance with the Clallam County Recreational Subdivision
Ordinance, as determined by the Clallam County Planning
Commission, and state and local health regulations. Recreational
subdivisions shall place utilities underground. (Page 40).

19 Based upon the evidence at the hearing, the first five quoted
20 provisions have not been shown to be violated. With respect to the
21 sixth provision, the glossary in Appendix C, page C-7, defines
22 recreational subdivision as: "A subdivision in which lots are sold
23 for [and] the use is restricted to recreation, weekend, summer or
24 other part-time use by camper vehicles or tents." A "subdivision"
25 is the "division of land into five or more lots, tracts, parcels,
sites or divisions for the purpose of sale or lease and shall include
all resubdivision of land." RCW 58.17.020(1). See Clallam County
Ordinance No. 38, 1971, Article 2, para. 15; Clallam County Ordinance
No. 39, 1971, Section 1.03.15. Here, there is no "subdivision"
of land into "five or more lots" which lots are "sold." Thus,
the "recreation subdivision" provision of the master program is
not applicable to the instant matter, although it appears that the
membership camper club ordinance may apply to appellant's activities.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 comment on the issue.

2 VI

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 From these Conclusions, the Board enters this

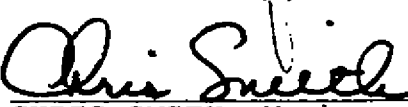
6 ORDER

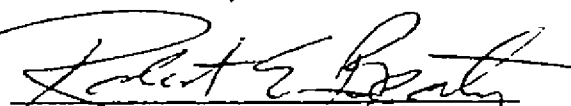
7 Clallam County Regulatory Order dated November 21, 1977 is
8 vacated.


9 DONE this 24th day of May, 1978.


10 SHOPELINES HEARINGS BOARD

11 
12 DAVE J. MOONEY, Chairman

13 
14 CHRIS SMITH, Member

15 
16 ROBERT E. BEATY, Member

17 
18 ROBERT F. HINTZ, Member

19 
20 GERALD D. PROBST, Member